

## Message Text

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SUBJECT: ALIEN SUITS AGAINST ROKG

REF: A. STATE 152822, B. SEOUL 4847, C. STATE 164041

SUMMARY: MINISTRY OF JUSTICE HAS INFORMED EMBASSY THAT ALIENS, AS WELL AS KOREAN NATIONALS, HAVE THE RIGHT TO BRING SUIT AGAINST THE KOREAN GOVERNMENT. END SUMMARY.

1. CHU MUN-KI, DIRECTOR, OFFICE OF LEGAL AFFAIRS, ROKG MINISTRY OF JUSTICE, INFORMED EMBOFF THAT KOREAN NATIONLS DO HAVE RIGHT TO BRING SUITS AGAINST THE KOREAN GOVERNMENT. AS HIS SOURCE, CHU QUOTED PARAGRAPH 1 OF ARTICLE 26 OF THE CONSTITUTION OF THE REPUBLIC OF KOREA, WHICH READS AS FOLLOWS: QUOTE IN CASE A PERSON HAS SUSTAINED DAMAGES BY UNLAWFUL ACTS OF PUBLIC OFFICIALS DONE IN THE COURSE OF THEIR OFFICIAL DUTIES, HE MAY FILE A CLAIM AGAINST THE STATE OR PUBLIC AGENCY IN ACCORDANCE WITH THE PROVISIONS OF LAW. MOREOVER, THE PUBLIC OFFICIALS CONCERNED SHALL NOT BE IMMUNE FROM LIABILITIES. UNQUOTE

2. A KOREAN NATIONAL MUST FIRST SUBMIT A CLAIM FOR DAMAGES TO THE STATE OR PUBLIC AGENCY IN ACCORDANCE WITH THE PROVISIONS OF THE STATE REDRESS ACT OF 1967, AS AMENDED FEBRUARY 5, 1973. THE COMPENSATION COUNCIL DECIDES WHETHER OR NOT TO PAY COMPENSATION. ANY SUBSEQUENT LAWSUIT DEMANDING COMPENSATION FOR DAMAGES MAY BE FILED ONLY AFTER THE COMPENSATION COUNCIL HAS RENDERED UNCLASSIFIED

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A DECISION AS TO WHETHER OR NOT TO PAY COMPENSATION FOR DAMAGES

(SEE ARTICLE 9 OF THE STATE REDRESS ACT, QUOTED BELOW.)

IF A PERSON IS NOT SATISFIED WITH THE DECISION RENDERED BY THE COMPENSATION COUNCIL, HE MAY FILE A LAWSUIT AGAINST THE STATE OR PUBLIC AGENCY IN ACCORDANCE WITH THE ADMINISTRATIVE LITIGATION LAW. IF A PERSON IS DISSATISFIED WITH THE DECISION OF THE COURT, HE MAY FURTHER APPEAL TO THE SUPREME COURT.

3. ARTICLE 9 OF STATE REDRESS ACT READS AS FOLLOWS:

QUOTE ARTICLE 9. (REQUISITE PRE-SUIT PROCESS) LAWSUITS FOR COMPENSATION FOR DAMAGES UNDER THIS ACT MAY BE FILED ONLY AFTER THE COMPENSATION COUNCIL (HEREINAFTER REFERRED TO AS THE "COUNCIL") HAS MADE A DECISION TO PAY COMPENSATION (HEREINAFTER REFERRED TO AS THE "DECISION OF COMPENSATION"); HOWEVER, EXCEPTIONS SHALL BE MADE IF THREE MONTHS HAVE ELAPSED SINCE THE DATE WHEN THE APPLICATION FOR THE DECISION FOR COMPENSATION WAS MADE. UNQUOTE

4. ALIENS ALSO HAVE THE RIGHT TO BRING SUITS AGAINST THE KOREAN GOVERNMENT. THE PROCESS FOR CLAIMING DAMAGES IS THE SAME AS THAT FOR KOREAN NATIONALS. HOWEVER, ARTICLE 7 OF THE STATE REDRESS ACT IMPOSES ONE CONDITION IN THE CASE OF AN ALIEN'S CLAIM FOR DAMAGES. IT READS AS FOLLOWS: QUOTE ARTICLE 7. (LIABILITY FOR AN ALIEN) THIS ACT SHALL APPLY ONLY IN THE CASE WHERE A MUTUAL GUARANTEE FOR LIABILITY BETWEEN TWO NATIONS EXISTS WHEN AN ALIEN IS A VICTIM OR A DAMAGE SUFFERER. UNQUOTE WHEN THE CLAIMANT IS A CITIZEN OF THE UNITED STATES, ARTICLE V OF THE TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KOREA PROVIDES THE GUARANTEE REQUIRED BY ARTICLE 7 OF THE STATE REDRESS ACT. SNEIDER

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